

MELLINGER KARTZMAN LLC

101 Gibraltar Drive, Suite 2F
Morris Plains, New Jersey 07950

Steven A. Jayson, Esq.

Tel. (973) 267-0220

sjayson@msklaw.net

Attorneys for Steven P. Kartzman, Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:	Case No. 19-25396 (VFP)
JAMES X. REZABALA and ERIKA M. PENACHI,	Chapter 7
	Honorable Vincent F. Papalia
Debtors.	

**AMENDED CERTIFICATION OF STEVEN P. KARTZMAN IN SUPPORT OF ENTRY
OF AN ORDER SURCHARGING BANK OF AMERICA FOR COSTS INCURRED IN
REMOVING AND REMEDIATING THE UNDERGROUND STORAGE TANK AT 3365
KENNEDY BOULEVARD, JERSEY CITY, NEW JERSEY PURSUANT TO 11 U.S.C. §
506(c)**

STEVEN P. KARTZMAN, of full age, certifies as follows:

1. I am an attorney at law of the State of New Jersey and am a member of Mellinger Kartzman LLC. I am the Chapter 7 Trustee in the above-captioned case and have full knowledge of the facts and circumstances hereof. I make this Amended Certification in support of the motion for entry of an order Surcharging Bank of America for Costs Incurred in Removing and Remediating the Underground Storage Tank at 3365 Kennedy Boulevard, Jersey City, New Jersey (the “Property”) Pursuant to 11 U.S.C. § 506(c) (the “Motion”).

2. The legal fees incurred by the estate solely in connection with the removal and remediation of the Underground Storage Tank at the Property total \$8,619.00. (**Exhibit “A”**).

3. Given these fees, and the costs of Brinks Tank & Environmental Service (“Brinks”), in the sum of \$48,334.75, without surcharging Bank of America, the unsecured creditors will not realize any distribution from the sale of 3365 Kennedy Boulevard, Jersey City, New Jersey (the “Property”). Additionally, due to a shortage of funds, my commission as Trustee must be reduced by about \$9,245.95 as these costs render the estate administratively insolvent. The Property is the only non-exempt asset in this bankruptcy estate.

4. The Property is owned by James X. Rezabala and Erika M. Penachi (collectively the “Debtor”) and Co-Owner, Geraldina Obando (the “Co-Owner”). At the time of the filing of the petition, Erika M. Penachi was not residing at the Property, and had not resided at the Property for three (3) of the last five (5) years. Erika M. Penachi’s share of the Property is subject to income taxes on the gain.

5. Below is an Equity Analysis of the sale of the Property:

Sales Price (see Order authorizing Sale at Dkt. No. 37)	\$600,000.00
Realtor’s Commission at 5%	(\$30,000.00)
Remediation to Brinks (see Dkt. No. 52)	(\$48,334.75)
Foreclosure Judgment as of Petition Date (see Proof of Claim #12-1)	(\$265,503.87)
Interest on Foreclosure Judgment at State Post-Judgment Interest Rate to June 30, 2022 ¹	(\$29,750.97)
Real Estate Taxes (estimated to June 30, 2022)	(\$16,468.88)
Water Lien (2019 – 2021)	(\$1,224.60)
Legal Fees ²	(\$55,307.00)
Net Sales Proceeds	\$153,409.93

¹ Post-Judgment Interest accrues at \$16.37 *per diem* during 2022.

² Fee Application pending for \$34,416.20 for the period September 18, 2019 to March 9, 2022. Total fees and costs through May 10, 2022, including the fees and costs subject of the fee application are \$55,307.42. All fees and costs relate to issues concerning the Property and liquidation of the Property.

Co-Owner's Equity (50% share)	(\$76,704.97)
Estate's Equity	\$76,805.76
James Rezabala 11 U.S.C. § 522(d)(1) Exemption (<i>see</i> Dkt. No. 1, p. 16)	(\$25,150.00)
Erika M. Penachi 11 U.S.C. § 522(d)(5) Exemption (<i>see</i> Dkt. No. 1, p. 18)	(\$13,900.00)
Erika M. Penachi Income Taxes per estate's accountant	(\$12,777.00)
Accountant's Fees (estimated)	(\$3,000.00)
Trustee's Commission on \$484,144.24 (\$600,000-\$25,150-\$13,900-\$76,805.76)	(\$27,457.21)
Division of Fire Safety (Rezabala) (\$1,036.00) New Jersey Division of Taxation (Rezabala) ³ (\$2,731.50)	(\$3,767.50)
Total from Sale Available to Unsecured Creditors	(\$9,245.95)

6. Due to the costs and fees to Brinks to remove and remediate the Underground Storage Tank, and the attorney's fees associated with the removal and remediation, the unsecured creditors will not realize a distribution from the sale of the Property.

7. At the time the realtor obtained a purchaser for the Property, and when we filed a motion to authorize a sale in February 2021, I expected over \$77,000.00 more proceeds to be available. As stated in the Motion to Authorize Sale, I had calculated a mortgage payoff then of about \$285,000.00, whereas now I am calculating that about \$311,721.00 will be due. Additionally, before remediation of the ground water at the Property was required, we expected the removal and remediation costs to be under \$26,300.00, whereas same now totals \$48,334.75. Between these two changes, \$48,700.00 less proceeds will be available. Likewise, as of March 25, 2021, when the Order authorizing sale was entered, the estate's legal fees totaled \$26,169.20, or about \$29,000.00 less than at present.

³ See Motion at Dkt. No. 26-1 and Order at Dkt. No. 37.

I hereby certify that the foregoing is true. I understand that if any of the foregoing is willfully false, I am subject to punishment.

Dated: May 13, 2022

/s/ Steven P. Kartzman
STEVEN P. KARTZMAN, ESQ.